

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
September 2, 2008

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:10 p.m. on Tuesday, September 2, 2008 at the Halfmoon Town Hall with the following members present:

Members: Chairman Hansen, Vice-Chairman Tedrow, Mr. Rose, Mrs. Jordan,
 Mr. Brennan
Alternates: Mrs. Smith-Law, Mr. Burdyl
Planner: Mrs. Zepko
Secretary: Mrs. Mikol

Mr. Brennan made a motion to approve the minutes from the August 4, 2008 meeting and seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that there is only one item tonight, an application for a setback variance for Belmonte Builders at 18 Gladstone Circle. Chairman Hansen opened the public hearing at 7:12 p.m.

Homeland Development/Belmonte Builders, 18 Gladstone Circle

David Flanders was present from Flanders Associates regarding a request for a front yard setback variance. Mr. Dave Brignati of Belmonte Builders was present. Mr. Flanders explained that a mistake has been made. The subdivision of Arlington Heights PDD was shown. A plot plan was submitted to the Building Department for a building permit for 18 Gladstone Circle. The permit was issued on May 14, 2008, the new owner of the home asked at the last minute if the house and garage could be flipped so the garage would now be on the right side of the house instead of the left side. In doing so, it was realized after the footings were placed and house was being framed that the garage was over the front yard setback line.

On July 14, 2008 Mr. Flanders office went to the job site to do foundation locations used for the closing and noticed the encroachment into the setback line. The proposal is to reduce the front yard setback at 18 Gladstone Circle to 33.7' on one side and 32.9' on the other side. The side yard setbacks are fine. The framing is well under way. All houses in the development are required under the PDD legislation to have a 35' setback and most houses are approximately 35-36'. Driving by you could never notice that an encroachment was made.

Mr. Brignati apologized to the Board for the error.

Mrs. Jordan asked if July 14th was the day you first found the mistake? Mr. Flanders commented that his office located the foundation on that day so it takes a few days before the work is processed. Mr. Flanders said that the foundation and framing was in already. Mrs. Jordan asked if they continued to work anyway? Mr. Brignati commented that they did continue to build with the hopes of gaining the variance.

Mr. Rose asked what the process the Town goes through with the Building Inspector when the house is staked out does someone go back out and check to see if the builder has not made a mistake.

Mr. Flanders commented that in this case the stakes were not changed. You can flip a house and we would never know it until a location was done. If the stakes are changed someone needs to go back to the plot plan on the computer and see if changes were made to the setbacks, no one did that. This is why Mr. Brignati from Belmonte's Office is apologizing. It's a P.D.D. and the lots are small and the houses are a decent size. In a conventional subdivision the lots are larger and the houses are not so tight on the lots and there is more room to play with.

Mr. Rose commented that the garage is now on the right side of the home looking at the street. Where was the garage originally plotted on 16 and 20 Gladstone? Mr. Rose asked because they could have 2 garages sitting next to each other from an aesthetic point of view.

Mrs. Zepko commented that for a subdivision approval they show a building envelope because they don't know what type home the owner will choose.

Mr. Flanders commented that the house choice is between the builder and the buyer and if the builder knows there is a grading situation they make recommendations. There is consideration taken on the garage on the right or left of the house, etc.

Mr. Rose commented that this occurred once before with Belmonte and we advised the builder at the time, to take precautions that it doesn't happen again and here we are again. This is the second time. If the Board said no would you tear the house down? It's a significant investment in your property.

Mr. Tedrow asked about Belmonte's basic procedure when you lay out the rectangle it looks like the rectangle violates the setback line. Mr. Flanders commented that the portion of that rectangle is not for the house. Belmonte sends Mr. Flanders's a plot of an enlarged lot with a house sketched on it in the location they want the dimensions. Mr. Flanders's draws the lot line and the rectangle is there to show where the house will fit.

Mrs. Jordan commented that no one really looked at this; you can see where the lines intersect. Mr. Brignati commented that when he flipped the house on his computer he didn't see that the garage was right on the line.

Mr. Tedrow asked what the width was of the road right-of-way in this development. Is it 60' or something less? Mr. Flanders replied that it was a 44' right-of-way. Mr. Tedrow asked if there was anyway the right-of-way can be redrawn to cover the variance needed? There are no houses across the street and the right-of-way could be pushed back on the other side. Mr. Flanders commented that the road is already paved; utilities are in, as are the easements along the front of the lots.

Mr. Brennan asked if Belmonte has put any procedures in place so this won't happen again? Mr. Brignati commented that he had the same software that Mr. Flanders has and he would spend more time at the computer checking the setbacks to make sure it's covered.

Mr. Rose asked Mr. Brignati what causes this to happen and what remedy can Belmonte Builders put in to a plan for preventing this from ever happening again. There maybe a situation in the future where this Board may not approve a variance and then you have a financial hardship. If you have any questions contact your surveyor and have them check it out before going any further. Mr. Rose recollects going back in the minutes of a similar incident with Belmonte in another subdivision, find the cause, what makes this happen, and follow steps so it doesn't happen again.

Mr. Flanders commented that some Towns require a foundation location prior to the framing beginning Halfmoon does not require it. Where are the inspectors while the house is being built? Mr. Rose recently built a deck and had inspectors there 5 different times and the deck was only 12' wide.

Chairman Hansen asked if there were any other questions before the hearing is closed? No one chose to speak.

Motion was made by Mr. Rose and seconded by Vice-Chairman Tedrow to close the public hearing at 7:27 p.m. Motion was carried.

Chairman Hansen commented for the benefit of the public audience members that may not be familiar with the procedures of the Board. The Board must now determine if the applicant has demonstrated the following:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
- Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- Whether the requested area variance is substantial.
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and,
- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Chairman Hansen further explained that in the granting of the area variance, the Board shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

This is the criterion the Board uses to determine the impact of the proposal as it relates to the project.

Mr. Rose commented that he does not feel that there will be a detriment to the character of the neighborhood or the nearby properties. Vice-Chairman Tedrow commented that it would be undetectable.

Vice-Chairman Tedrow commented that if it were a traditional 60' right-of-way there would be some flexibility to change the front lot line but it looks like things are pretty tight in this subdivision. Mrs. Jordan commented that the only other alternative is to tear the house down and start over. That is not in the builder's best interest at this point and the substantiality of the request is not so much that that should be done, but it is an alternative. Mr. Brennan commented that he agrees with Mrs. Jordan without any hesitation or reservation but suggests to the Board of Appeals that it's not just the builder we are inconveniencing, it is the respective homeowner who is likely under a tight time frame right now as is anyone else in the United States. Mr. Rose commented that the infrastructure is already in.

Chairman Hansen commented that the variance is not substantial and asked if any Board member had more to add. No one replied.

Mr. Brennan commented that the variance would not be detectable.

Mrs. Jordan commented that it is absolutely self-created, Vice-Chairman Tedrow agreed. Mrs. Jordan stated that Belmonte Builders needs a procedure in place for the future and feels it was very bold of them to continue building when they knew the mistake happened, in your mind you assumed that the Board would grant the variance. The Board suggests caution in the future, as it may not always be ok for a variance. Mr. Rose commented that each case is treated individually, however; it is a second time and if you come with a third mistake Mr. Rose will have a hard time believing that the procedures are being followed. This is what we are striving for.

Chairman Hansen commented that the Board does have the option of imposing reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the local law and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community. This case is a little unusual, as the options have already been discussed. It appears it is an all or nothing option. There is nothing in between here. Mr. Rose commented that as a condition, if this lot wants to expand its garage, it is too far into the setback and it would be out of the question. Mr. Brennan replied that anyone who may make a motion should mention the absolute measurements that the Board is allowing.

Motion made by Mr. Rose to approve the area variance as requested based on the tests the Board went through with a condition that it's the only variance allowed for the front setback for the garage and this would be the minimum setback for this parcel. Seconded by Mr. Brennan. Motion was carried.

Motion made by Mrs. Jordan and seconded by Mr. Rose to adjourn the meeting at 7:50 p.m. Motion carried.

Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals